

**From:** [Chris Vest](#)  
**To:** [\\*TE/GE-EO-F990-Revision;](#)  
**CC:** [Jim Clarke;](#)  
**Subject:** ASAE Comments on Draft Form 990  
**Date:** Monday, September 10, 2007 3:04:28 PM  
**Attachments:** [Draft 990 ASAE comments.doc](#)

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Hello, attached please find the American Society of Association Executives' (ASAE) comments on the draft Form 990. Thank you for the opportunity to comment. Please contact us if you require additional information.

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September 10, 2007

Lois G. Lerner  
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz  
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston  
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service  
Form 990 Redesign  
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Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

In our capacity as the leading voice for the association management profession, the American Society of Association Executives (ASAE), Washington, DC, respectfully submits the following comments in response to your request of June 14, 2007, regarding the draft Form 990 and accompanying schedules, currently scheduled to be released in final form in 2009, for the 2008 filing year.

ASAE is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners representing nearly 12,000 tax-exempt organizations. Its members manage leading trade associations, individual membership societies, and voluntary organizations across the United States and in 50 countries around the globe. We advocate for voluntary organizations so that they may continue to improve the quality of life in the United States.

It is ASAE's opinion that the draft Form 990 poses significant questions and concerns for associations and other nonprofit organizations that are required to file. Due to the diversity of organizations in the tax-exempt community – diversity in size, type of organization, activities, and sources of revenue – the proposed changes to the form will impact tax-exempt organizations differently. Accordingly, ASAE has been working hard to inform its membership of the existence of this new draft, as well as your agency's request for comments -- but because of the size of the sector, many members still remain unaware of the significant changes proposed and their potential impact on their organizations.

ASAE is aware of and appreciates the IRS's stated willingness to modify parts of the new form based on comments received by September 14, 2007, the end of the 90-day comment period. However, ASAE strongly feels that the brevity of this period will not allow for proper comprehension and input from the majority of organizations filing Form 990. Because of the lack of awareness among the majority of filing organizations, and the number of unanswered questions for those few that have studied the draft form, rushing the Form 990 rewrite for any reason, including those related to budget and programming, would be a mistake.

**Ideally, ASAE would like to see an extension of the comment period to allow for prudent consideration of the new draft form and its implications for the different types of filing organizations. ASAE acknowledges the IRS's contention that this may not be possible, because of technological and budgetary reasons. Accordingly, ASAE requests a delay in implementation of the core form until the 2009 tax year (returns filed in 2010).**

**ASAE requests an additional delay of one year or more of two schedules that potentially have a severe impact on associations: specifically, Schedule C, "Political Campaign and Lobbying Activities," and Schedule F, "Statement of Activities Outside the U.S." Given that there is likely to be additional administrative and recordkeeping costs associated with compliance in these areas, the additional time prior to implementation will give tax-exempt organizations the opportunity to ensure complete, accurate reporting.**

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ASAE applauds the Internal Revenue Service's efforts to redesign what is unquestionably an outmoded form, one that has been added to and rearranged so often over the years that it no longer has a logical flow, and is difficult for the public to understand and follow. Given the explosive growth of the tax-exempt sector since the last major redesign of the form in 1979, as well as significant changes in the complexity of tax-exempt activities, it is appropriate for the IRS to undertake this rewrite.

Your agency's guiding principles behind the redesign – to enhance transparency, promote tax compliance, and minimize the burden on filing organizations – are appreciated by ASAE and its members. However, ASAE does not believe that the draft form released in June adequately addresses these principles. ASAE has serious concerns about several new areas of focus on the new form, including calculations of executive compensation and fundraising activity as a percentage of total revenues; compensation of key employees; and requests for detailed information on governance, activities conducted outside the United States, and political activities. It is unclear whether these additional requirements will actually increase transparency, while it is very probable that the expanded form will not only increase organizations' recordkeeping and information-gathering burdens, but may actually promote greater noncompliance, as organizations struggle to keep up with an ever-growing regulatory burden that diverts valuable time and resources away from core purposes and programs.

Your agency has also publicly stated that one of your goals was to design a core form that would be "applicable to all filers." ASAE agrees that this is a sound idea. However, ASAE's position is that the draft Form 990 is skewed entirely too much toward charitable organizations, and does not take into account the vastly different purposes and practices of membership organizations and other non-charitable tax-exempt organizations. The end result is a form that is "foreign" to trade associations, professional societies, non-charitable 501(c)(3) organizations, and other non-charitable entities. In ASAE's view, many of the questions in the draft form are not particularly applicable to associations, and the responses associations will be forced to provide might have the unintended consequence of unjustly casting them in an unfavorable light, especially in the public view. The public and the media do not seem to be nearly as familiar with trade and professional organizations as they are with public charities. A properly-designed Form 990 could help educate them about the purpose and mission of a professional or industry-oriented association. ASAE does not believe that the draft Form 990 accomplishes this purpose.

**Summary (Part I)** -- ASAE understands that the purpose of Page 1 "Summary" section is to provide an overall "snapshot" of the organization. This is a useful and logical approach to Form 990 redesign, and ASAE believes that the information presented in this section should be pertinent, important, consistent, and contextually accurate. The current draft summary page, however, appears to be more of a collection of disparate facts, rather than an overall cohesive picture of the reporting organization. Furthermore, the summary page calculates compensation and fundraising expense ratios that are both meaningless and grossly misleading, especially to the casual Form 990 reader.

Additionally, ASAE does not think that the draft summary page includes sufficient information appropriate to all exempt organizations, not just to charities. Clearly, the summary in its current form is chiefly geared to charitable organizations and so provides an incomplete and potentially confusing "snapshot" of other types of organizations. ASAE is concerned that unsophisticated readers of the 990 may come away with an erroneous impression of non-charitable organizations, especially if they do not bother to read beyond the first page.

ASAE has these additional specific concerns regarding the summary page:

- Questions 3 and 4 ask for total governing body members and total "independent" governing body members. Frankly, the term "independent member of a governing body" is somewhat meaningless, in the context of a trade association or professional society. By definition, a trade association is a membership organization composed of individuals or corporations who have bonded together for a common business purpose. Virtually every member of a trade association is "related" to the organization, in one form or another. This means that every single governing body member could very well fail at least one of the "independence"

definitions set forth in the draft Glossary.<sup>1</sup> Accordingly, a "zero" answer to Question 4 would provide a misleading and distorted picture of the trade association or professional society providing such answer.

- ASAE does not believe that Question 6, which asks for the number of persons receiving compensation of more than \$100,000, offers any relevance to the reader, and can only be taken out of context by readers of the summary page only. The \$100,000 threshold appears arbitrarily set, and given the different types and staff sizes of tax-exempt organizations, comparisons between organizations based on this question would be wholly inappropriate. ASAE recommends this question be eliminated from the summary page at minimum, and preferably from the entire form.
- Question 7, which asks for the highest compensation amount reported in Part II, seems to have no purpose other than sensationalism. As with Question 6, it provides salary information completely out of context with the rest of the organization, its size, mission, revenues, and programs. Providing a single compensation figure out of context is utterly misleading, especially given the diverse nature of the different types of 501(c) organizations. This reporting will lead to individuals making compensation comparables out of context. Since compensation for the chief executive officer, typically the highest compensated employee, is required in Part II of the core form, ASAE recommends this question be eliminated from the summary page.
- Questions 8b, 19b, and 24b calculate "metrics" or percentage ratios that purport to measure certain organizational efficiencies. ASAE strongly disputes the use of metrics in general, as by their very nature they are of limited utility and are prone to manipulation. ASAE particularly objects to the specific metrics presented on the summary page. These ratios are arbitrary; furthermore, they are neither accepted nor used in any segment of the nonprofit world. Furthermore, because of the vast diversity of organizations required to file the 990, any attempts to use these metrics to compare one organization with another -- even similar organizations -- would yield highly unreliable results. Examples:
  - An organization's fundraising efforts are not necessarily constant from year to year. In the initial years of a fundraising campaign, the "investment" (fundraising expenditure) is usually fairly large, compared with contributions actually received. A young exempt organization might end up being unjustly penalized by a meaningless, but unfavorable, ratio, because the unsophisticated donor will avoid contributing to it. And, as a

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<sup>1</sup> The third definition of an "independent member of a governing body" in the Draft Glossary reads as follows: "A person who does not receive, directly or indirectly, material financial benefits from the organization except, if applicable, as a member of the charitable class served by the organization." This is a definition that is clearly aimed solely at charitable organizations, but it is not at all clear whether this definition would also be stretched to apply to trade and professional association members, who do receive significant benefit from membership in an association.

single year's ratio is relatively meaningless and could be confusing, it might also be useful to have an organization disclose, on that schedule, fundraising expense information for a period of several years.

- The executive compensation ratio provides no useful information whatsoever, as it fails take into account organization size and complexity. In a small-staff organization, the CEO might be only one of a handful of employees, or may even be the sole employee. His or her compensation could, accordingly, constitute a significant portion of overall expense. Without the proper context, the casual Form 990 reader is likely to merely latch onto the reported ratio and look no further, even to other possibly clarifying information on the summary page.

ASAE firmly requests that all "efficiency metrics" or ratios be removed from the Form 990, as they will merely take the place of thoughtful evaluation on the part of Form 990 readers -- especially the media, potential donors, and grantmakers.

- The inclusion of a "consolidated financial statement" reconciliation schedule to the summary page would be useful for those organizations that are part of a related group. While the proposed reconciliation schedule (Part XIV of Schedule D) is useful in many instances, those organizations with financial information reported as part of a set of consolidated financial statements are sometimes at a disadvantage, especially when "consolidating" financial statements, breaking out separate company financial information, are not available. Readers of both the Form 990 and the financial statements of a given organization (especially grantmakers and donors) are oftentimes confused when Form 990 information does not come close to matching financial statement information, because other organizations' financial information is also included.

Additionally, it might be useful to add "consolidated financial information" lines to Part XIV of Schedule D, to allow organizations to back out consolidated financial information pertaining to related organizations.

- Questions 25 and 26 have little relevance to 501(c)(6) and non-charitable 501(c)(3) organizations, and are another example of the summary page's bias toward charitable organizations. ASAE requests that this section be moved off the front page, and replaced with more useful information, such as a summary of program service accomplishments. Additionally, Question 2, which asks for the three most significant activities and activity codes, is completely meaningless to the casual Form 990 reader, who would be better served by a brief summary of annual accomplishments.

**Compensation (Part II and Schedule J)** -- ASAE firmly supports the concept of transparency, including disclosure of compensation for officers, directors, and key employees. Nevertheless, ASAE is greatly concerned over the extensive compensation reporting required by the new Form 990. Specific concerns are as follows:

- ASAE questions as inappropriate the expansion (in the draft Glossary) of the definition of "key employee" to include a person "who has responsibilities, powers, or influence like those of officers, directors, or trustees, *including a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization.*" [emphasis added] In practice, these so-called "department heads" generally have less power and influence than the Glossary definition assumes, and including their compensation will serve no real purpose, other than providing additional fodder for reporters, as well as disclosing potentially damaging "inside" information to competing organizations. ASAE suggests that the IRS return to the definition for "key employee" currently included in the Form 990 instructions: "any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization . . . [for example] a chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both." ASAE interprets this definition as excluding department heads, as they in most cases have insufficient authority to "control" the organization's activities or finances, and so do not have powers or influence "similar to those of officers, directors or trustees."
- Likewise, ASAE questions expansion of compensation reporting for the "5 highest paid" employees, believing it also is inappropriate, for non-charitable organizations, for the same reasons. ASAE requests that non-section 501(c)(3) organizations be exempted from this additional reporting requirement, as well as from the "5 highest paid independent contractors" requirement.
- ASAE is troubled by the new Form 990's disclosure of the city and state of residence for every person listed in Part II, Section A. Because the Form 990 is available to anyone over the Internet via Guidestar (and possibly other online venues, as well), the disclosure of this information could lead to privacy invasion, or even outright identity theft. In public comments, you have indicated that knowing the physical location of these individuals is meaningful for 990 reporting purposes. ("We believe it is important to know, for example, if an organization is situated in New York City but all of its board members are in California."<sup>2</sup>) ASAE strongly disputes the importance of this information, and suggests that providing the member's state of residence, rather than city and state, would accomplish the same purpose, and would constitute a far lesser invasion of privacy. ASAE prefers, though, that the organization's address continue to be an alternative for this reporting purpose.
- ASAE is concerned over one particular question asked in Section B of Part II. Question 3 asks whether the compensation process for an organization's CEO,

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<sup>2</sup> Remarks of Elizabeth Goff, IRS Tax Law Specialist, transcript of *Phone Forum-Draft Redesign Form 990*, July 18-19, 2007.

Executive Director, Treasurer, and CFO includes "a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision." This is a difficult question for most associations to answer with any accuracy, because it is common industry practice for an association's Board of Directors to hire and compensate the CEO and/or Executive Director;<sup>3</sup> but not the CFO -- who is usually hired and compensated by the CEO or Executive Director. Accordingly, if an association complied with stated procedures for every listed position *other* than the CFO, it would still be forced to answer "no" to this question. This would be a highly misleading answer. ASAE recommends that if this question is retained in the final Form 990 version, that a checkbox be provided for *each* position: CEO, Executive Director, Treasurer, CFO, and permit an organization to check "N/A" if the position is unpaid or does not exist at that particular organization.

- With regard to executive compensation reporting on Schedule J, ASAE does not see the utility of providing nontaxable expense reimbursements (Column E). As these amounts merely represent repayments for legitimate business expenditures submitted and documented under an "accountable plan," no meaningful information can be gleaned by the amount of expenses so reimbursed. Moreover, any large amounts listed may be wrongly misconstrued by non-sophisticated readers of the form. Organizations vary in their reimbursement policies, and what may seem like an excessive amount of reimbursement may merely reflect a difference in accounting practices and procedures: employees and board members of Organization A may, for example, book and pay for their own travel arrangements, whereas at Organization B, all travel arrangements are booked and paid for by the organization itself. Furthermore, including nontaxable reimbursements in Column (F) significantly distorts total compensation figures.

**Governance (Part III)** -- ASAE questions the statutory authority of the IRS to ask these questions, and believes they should be left out of the final Form 990 version. While ASAE believes, as IRS does, that a well-governed organization is one that is compliant, ASAE nevertheless feels strongly that these questions are not appropriate for Form 990 reporting, nor do they accurately reflect a complete governance picture. Furthermore, the governance practices implied by these questions are not necessarily appropriate for all of the vastly different types organizations required to file a 990. Some of the practices suggested by the questions are, frankly, impractical. For example, it is not usual practice for an organization's governing body to review the Form 990 before it is filed, nor should it be necessary, as long as organization management is accurately following a Board's directives. Additionally, not all documents listed in Question 11 are required to be disclosed, and ASAE is concerned that a "no" answer may have negative implications, creating a *de facto* standard where none should exist.

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<sup>3</sup> The Treasurer of a trade association, business league or professional society is usually an unpaid volunteer Board member. Additionally, a trade association generally will have an Executive Director or a CEO, but not both.

**Statement of Program Service Accomplishments (Part IX)** – ASAE believes information about the organization’s most significant program service accomplishments is essential to any public disclosure and the reader’s understanding of whether an organization is meeting its exempt purpose. As this important information is minimized by its location on the last page of the core form, ASAE recommends this information be moved up toward the beginning of the form.

**Foreign Activities (Schedule F)** -- ASAE strongly believes that this schedule will be extremely burdensome for nearly all trade associations, business leagues and non-charitable 501(c)(3) groups. Most business and industry is global these days, and most associations have international members, and hold meetings and conduct programs in Canada, Mexico, Europe, the Pacific Rim, and elsewhere. Requiring a detailed accounting of employees, activities, expenditures, etc. on a per-country basis will require associations to spend many hours gathering information that will be of little overall utility, either to IRS or to readers of the Form 990. The activities of associations are not ordinarily those that are connected with potential terrorism financing.

As with many other aspects of the draft Form 990, ASAE views this schedule as being aimed primarily at charitable organizations, and strongly suggests that non-charitable organizations be exempted from filling out this schedule unless they have either a bank account or permanent employees in a foreign country. This would exempt associations from having to report most foreign conferences and programs. Additionally, ASAE requests that IRS delay implementation of this schedule, so that those organizations most affected by the new requirements can learn more about what will be required for compliance with the new rules.

**Political Activities (Schedule C)** -- While Schedule C principally consists of questions previously requested on disparate parts of the current Form 990 and its schedules, there is one addition to the form that ASAE strongly objects to, as it constitutes duplicative reporting. Question 5 requires all organizations to list the names, addresses, and EINs of all section 527 political organizations to which payments were made, including political contributions properly received from members and transferred to an association's own political action committee (PAC) under Federal or state law. All of this information is available elsewhere: political contributions from an association's own treasury (those subject to an excise tax) may be looked up online in one of several PAC databases, or in Federal Election Commission (FEC) filings; contributions to an association's own PAC from its members are regularly reported in filings with the FEC or to a state reporting agency, as appropriate. Additionally, associations making direct political contributions must report the recipients of those contributions in a timely-filed Form 1120-POL.

ASAE urges IRS to withdraw this question, except where such contribution information is not otherwise readily available. It is duplicative and merely adds needlessly to the complexity of the revised 990.

Additionally, ASAE requests that IRS delay implementation of this schedule, so that those organizations most affected by the new requirements can learn more about what will be required for compliance with the new rules.

**Administrative Burden** -- Overall, ASAE objects to the additional taxpayer burden inherent in the expanded Form 990. Organizations large and small, charitable and non-charitable, will be forced to spend many additional hours gathering information for both the core form and the schedules. ASAE has heard anecdotally from accountants that the average association will probably spend at least 50% more time complying with the extra information requirements imposed by this form. This will be especially burdensome for small organizations, especially those staffed chiefly by volunteers, whose resources are thin to begin with.

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ASAE believes that transparency, compliance, and reduced regulatory burdens benefit both nonprofit organizations and the communities they serve. ASAE does not believe that the current draft effectively addresses these principles. ASAE offers its full assistance to the IRS in properly formulating a revised Form 990 that will indeed accomplish these stated goals of the IRS *without* unintended consequences and increased burden on the filing community.

Sincerely,

John H. Graham IV, CAE  
President and CEO



August 31, 2007

Form 990 Redesign  
ATTN: SE:T:EO  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The American Society of Association Executives (ASAE) recognizes the importance of the Internal Revenue Service's (IRS) efforts to redesign the Form 990 tax return filed annually by tax-exempt organizations, and looks forward to offering detailed formal comments on the draft form prior to the Sept. 14 deadline.

The IRS's guiding principles behind the redesign – to enhance transparency, promote tax compliance, and minimize the burden on filing organizations – are appreciated by ASAE and its members' organizations. Given the explosive growth of the tax-exempt sector since the last major redesign of the form in 1979, as well as significant changes in the complexity of tax-exempt activities, it is appropriate for the IRS to undertake this rewrite.

ASAE has been working hard to inform its membership of the existence of a new form and the agency's request for comments, but because of the size of the sector, many remain unaware of the significant changes proposed and their potential impact on tax-exempt organizations.

It is ASAE's opinion that the draft Form 990 poses significant questions and concerns for associations and other nonprofit organizations that are required to file. Due to the diversity of organizations in the tax-exempt community – diversity in size, type of organization, activities, and sources of revenue – the proposed changes to the form will impact tax-exempt organizations differently.

ASAE, for its part, has serious concerns about several new areas of focus on the new form, including calculations of executive compensation and fundraising activity as a percentage of total revenues; compensation of key employees; and requests for detailed information on governance, activities conducted outside the United States, and political activities. We also believe the prominence of compensation and fundraising ratios on the first page of the summary page smacks of sensationalism. ASAE will share these detailed comments with the IRS by the Sept. 14 deadline.

However, as stated, ASAE's own surveys of member organizations and consultation with tax practitioners have made it clear that there is not sufficient awareness of the rewrite in the exempt sector to support the IRS's admittedly aggressive schedule for implementation. The IRS is making substantial changes to the tax compliance document filed by more than 1.3 million tax-exempt organizations and is operating on too accelerated a schedule to allow for due consideration by the majority of filers.

**For this reason, ASAE is requesting for an extension of the comment period to allow for prudent consideration of the new draft form and its implications for the different types of filing organizations. If the comment period cannot be extended due to technology or other reasons, ASAE requests a delay in implementation until the 2009 tax year (returns filed in 2010).**

ASAE is aware and appreciative of the IRS's stated willingness to modify parts of the new form based on comments received by Sept. 14. However, this comment period (90 days from the release of the draft form in June) will not allow for proper comprehension and input from the majority of organizations filing Form 990.

Because of the lack of awareness among the majority of filing organizations, and the number of unanswered questions for those few that have studied the draft form, rushing the rewrite for any reason would be a mistake.

ASAE offers its full assistance to the IRS in properly educating and soliciting comments from the tax-exempt sector that will result in a new Form 990 that accomplishes the three stated goals of the IRS without unintended consequences and increased burden on the filing community.

Sincerely,

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American Mensa, Ltd.

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Message Therapy Foundation

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American Occupational Therapy Association, Inc.

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American Resort Development Association

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APICS

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APPIC: The Association of Psychology Postdoctoral  
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ASIS International

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Association Executives of North Carolina

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Association for Healthcare Philanthropy

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Lance Wilson  
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